



**STATE OF NEW JERSEY**

***Board of Public Utilities***

*Two Gateway Center  
Newark, NJ 07102*

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION FOR )  
AN ORDER AUTHORIZING LIGHTWAVE )  
COMMUNICATIONS, LLC TO PROVIDE )  
LOCAL EXCHANGE AND INTEREX- )  
CHANGE TELECOMMUNICATIONS SER- )  
VICE THROUGHOUT NEW JERSEY )

ORDER OF APPROVAL

DOCKET NO. TE00110853

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated November 1, 2000, LightWave Communications, LLC (Petitioner or LightWave) filed a petition with the Board of Public Utilities (Board) requesting authority to provide local exchange and interexchange services throughout the State of New Jersey. In its petition, LightWave requested confidential treatment of financial and ownership information in its Exhibit G. In addition, LightWave responded to a Staff questionnaire as part of its petition and to Staff interrogatories by letters dated February 12, 2001 and March 2, 2001.

BACKGROUND

According to the petition, Petitioner was incorporated under the laws of the State of Delaware on May 18, 1999 as IT Gateway Services, LLC. On November 29, 1999, it amended its Certificate of Formation to change its name to LightWave Communications, LLC. Petitioner's principal offices are located at 14504 Greenview Drive, Suite 302, Laurel, Maryland 20708. Petition at 3.

Petitioner submitted copies of its Articles of Incorporation, Delaware Certificate of Good Standing and its New Jersey Certificate of Authority to Operate as a Foreign Limited Liability Corporation. Petition at 2, Exhibits B, C; February 12, 2001 letter at 1, Exhibit 1. According to the petition, LightWave was formed to provide local exchange and exchange access services. Petition at 1. Petitioner advised that LightWave is currently certified to provide facilities-based and resold local exchange and interexchange telecommunications services in Massachusetts and New York, and local exchange service in the District of Columbia. February 12, 2001 letter at 2. LightWave has not been denied authority to provide telecommunications services in any state. In addition, LightWave has no pending civil, criminal or administrative actions against it.

LightWave advised that it is currently planning to opt into an interconnection agreement between Verizon New Jersey and Pathnet, Inc.

In its petition, Petitioner advised that it seeks authority to provide local exchange and interexchange telecommunications services to other carriers in urban markets. LightWave initially intends to offer broadband connectivity and collocation arrangements for customers seeking to simplify network access. LightWave will offer a suite of advanced broadband services designed to specifically address the needs of today's bandwidth intensive communications requirements. LightWave's position as a carrier's carrier will allow it to focus on the unique needs of CLEC, IXC, ISP and ILEC customer markets. In addition, network access within these markets will be facilitated by extensive SONET transport rings that can be accessed directly or by using Unbundled Network Elements (UNEs). Petition at 4-6, Exhibit A at 3-6.

In its petition, LightWave requested a temporary waiver of any requirement for audited financial statements. However, as part of its February 12, 2001 letter at Exhibit 2, Petitioner submitted the required years of pro forma financial statements and has rescinded the request for a waiver regarding the financial statements.

Petitioner requested waivers of N.J.A.C. 14:1-5.15 and 14:10-1.16(b), which require that its books and records be maintained in accordance with the Uniform System of Accounts (USOA) and within the State of New Jersey. Petitioner requested permission in the interest of efficiency and to prevent undue burden, to maintain its books and records in accordance with Generally Accepted Accounting Principles (GAAP). February 12, 2001 letter, Exhibit 3. In addition, Petitioner requests permission to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices in Laurel, Maryland. February 12, 2001 letter, Exhibit 3. Petitioner stated that, upon written notice from the Board, it will produce its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses incurred for examination of the records.

Petitioner asserted that approval of its petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petition at 9. Petitioner also asserted that approval of this petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings. *Id.*

With regard to its managerial qualifications, LightWave stated that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petition at 6. Petitioner submitted the professional biographies of its key personnel who, according to LightWave, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry. Petition at 6, Exhibit F.

Petitioner has submitted the required pro forma income statements and balance sheets and the 3<sup>rd</sup> Quarter 2000 financial statements of its parent company, LightWave Communications, Inc., as evidence of sufficient financing.

By letter dated April 23, 2001, the Division of Ratepayer Advocate recommended approval of this petition.

## DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability to any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed LightWave's petition and the information supplied in support thereof, the Board FINDS that Petitioner has demonstrated that it possesses the requisite financial, technical and managerial resources, which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES Petitioner to provide local exchange and interexchange telecommunications services in New Jersey subject to approval of its tariff. The Board notes that Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board. Regarding the Petitioner's request for waivers of Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements to maintain its books and records under the USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board access to its books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES Petitioner's request for the exemptions from maintaining its books and records in New Jersey and under the USOA.

The Board FINDS Petitioner's request that its financial records receive confidential treatment reasonable and HEREBY ORDERS that Petitioner's financial information be kept under seal.

DATED: 6/28/01

BOARD OF PUBLIC UTILITIES  
BY:

(signed)  
CAROL J. MURPHY  
ACTING PRESIDENT

(signed)  
FREDERICK F. BUTLER  
COMMISSIONER

ATTEST:

(signed)  
FRANCES L. SMITH  
BOARD SECRETARY